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**DISTRICT III/II**

September 24, 2014

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You are hereby notified that the Court has entered the following opinion and order:

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2013AP1459-CRNM      State of Wisconsin v. William Victor Sutrick (L.C. #2012CF119)

Before Neubauer, P.J., Reilly and Gundrum, JJ.

William Victor Sutrick appeals from a judgment of conviction entered upon his no contest pleas to two counts of burglary. Sutrick's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). Sutrick received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the no-merit report and an independent review of the record,

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

we conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

In August 2012, the State filed a criminal complaint charging Sutrick with twenty-four separate counts, all as a party to the crime and with a repeater enhancer. The charges stemmed from various burglaries, thefts and incidents of criminal damage to property occurring over a two-day period earlier that month.

Pursuant to a plea agreement, Sutrick pled no contest to two burglaries, counts one and four of the complaint and identical information. On the State's motion, the repeater enhancers on both charges were dismissed, and the remaining twenty-two counts were dismissed and read in. As to sentencing, the agreement included a joint recommendation for two consecutive five-year bifurcated sentences, each to be comprised of two years of initial confinement and three years of extended supervision.<sup>2</sup> A presentence investigation report (PSI) was prepared and filed, and at sentencing, the court imposed two concurrent ten-year bifurcated sentences, each comprised of five years of initial confinement and five years of extended supervision.

The no-merit report first analyzes the plea-taking procedures in this case and concludes that there is no arguably meritorious challenge to the entry of Sutrick's pleas. Our review of the record—including the plea questionnaire, waiver of rights form, and plea hearing transcript—confirms that the trial court engaged in an appropriate colloquy and made the necessary advisements and findings required by WIS. STAT. § 971.08(1)(a), *State v. Bangert*, 131 Wis. 2d

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<sup>2</sup> Thus, the total length of the jointly recommended sentence was to be ten years, with four years of initial confinement and six years of extended supervision.

246, 266-72, 389 N.W.2d 12 (1986), and *State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. Aware that Sutrick was on various medications, the trial court addressed Sutrick and confirmed that the medications did not impair his ability to make decisions or understand the proceedings. The trial court specifically ascertained Sutrick's understanding of the essential offense elements, including the party to a crime modifier, the plea agreement, maximum penalties, and that the court was not bound by the parties' agreement or recommendations. The trial court confirmed that Sutrick had enough time and was satisfied with his attorney and that no threats or promises were made to induce his plea. The court specifically drew Sutrick's attention to the completed plea questionnaire on file and ascertained that he reviewed, signed and understood the form, including the constitutional rights waived by his no contest pleas. See *State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987) (a completed plea questionnaire and waiver of rights form is competent evidence of a knowing, intelligent, and voluntary plea). The trial court carefully ensured that Sutrick understood the significance of read-in charges and went through each dismissed but read-in count with Sutrick. See *State v. Straszowski*, 2008 WI 65, ¶97, 310 Wis. 2d 259, 750 N.W.2d 835. With the parties' agreement, the trial court relied on the criminal complaint to establish a factual basis for the charges of conviction. There is no arguable merit to a claim that the court failed to fulfill its obligations or that Sutrick's plea was anything other than knowing, intelligent, and voluntary.

We also agree with appointed counsel's sentencing analysis and conclude that there is no arguably meritorious challenge to the trial court's sentence. Each sentence was lawful in that it did not exceed the maximum statutory penalty. In fashioning the sentence, the court considered the seriousness of the offense, the defendant's character and history, and the need to protect the

public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The trial court also discussed the relevant sentencing factors under *State v. Gallion*, 2004 WI 42, ¶¶40-44, 270 Wis. 2d 535, 678 N.W.2d 197. Further, the sentence was not so excessive or unusual as to shock the public's sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). There is no meritorious challenge to the trial court's exercise of discretion at sentencing.

Finally, the no-merit report concludes that there is no arguably meritorious issue arising from the fact that two of Sutrick's alleged co-conspirators were never criminally charged with these offenses. For the reasons outlined in the no-merit report, including the well-established principle that the State is granted broad discretion to make its charging decisions, we agree.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the judgment, and discharges appellate counsel of the obligation to represent Sutrick further in this appeal.

Upon the foregoing reasons,

IT IS ORDERED that the judgment is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Ralph J. Sczygelski is relieved from further representing William Victor Sutrick in this matter. *See* WIS. STAT. RULE 809.32(3).

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*